

FIRST DEGREE MURDER  
THE POST CONVICTION EXPERIENCE IN MASSACHUSETTS

Massachusetts Department of Correction

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Commissioner

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CONTENTS

	<u>Page</u>
I. Introduction	1
II. Background	
What is First Degree Murder?	3
Plea Bargaining	3
III. The Sentences	
The Death Penalty: Past, Present, Pending	6
Life Imprisonment: Past, Present, Pending	8
IV. Furloughs for Lifers	10
V. Appeals	12
VI. Respites	12
VII. Commutations and Parole	13
VIII. First Degree Murder, A Statistical Summary 1900 - 1973	
Current or Final Disposition	14
Trends: National and State	14
Movement of First Degree Lifers Within the Massachusetts Correctional Institutions	18
IX. Summary	20
X. Footnotes	21
XI. Appendix A: An Analysis of the Effects of the 1951 Law on Juries Sentencing Behavior	A1

## II.

### TABLES

	<u>Page</u>
A. Disposition of 154 First Degree Murder Indictments 1956 - 1965.	4
B. The Death Sentence	7
C. First Degree Murder - Life Imprisonment	9
D. Frequency Counts: Current or Final Dispositions	15
E. Percentages: Current or Final Dispositions	16
F. Current Security Level of Persons Committed for 1st Degree Murder Between January 1, 1963 and January 1, 1973.	19
G. Distribution of Verdicts Produced by Homicide Cases	A2

### GRAPHS

A. Incidence, Indictment and Conviction Trends 1956 - 1965	5
B. Comparison of National M & NNM Rate with Massachusetts M & NNM Rate and MCI Murder and Manslaughter Commitment Rate	17

## INTRODUCTION

Murder, being the sensationalized subject that it is, receives a disproportionate amount of coverage from the media. Newspapers give us the daily details while television follows the police and courts in "action". But coverage usually stops once an offender enters prison and therefore little is known about what happens to a murderer beyond that point. This report will look at murder from the viewpoint of corrections. It will examine what happens to a murderer after the verdict of guilty. Specifically the report will deal with first degree murderers in Massachusetts. It will trace the historical development of laws which define and set the penalty for first degree murder. It will discuss the role plea bargaining plays in determining who gets tried for first degree murder. It will answer questions such as: What is the difference between a respite and a stay of execution? Can a first degree murderer be released on parole? Also national and state trends of first degree murder will be analyzed. Finally, movement of first degree murderers through the Massachusetts correctional system will be examined. First degree murder is a particularly relevant subject at this time due to the immediacy of two related issues.

First, the perennial issue of capital punishment has been given new emphasis by a recent Supreme Court decision (*Furman v. Georgia*) declaring capital punishment to be "cruel and unusual punishment" due to its inequality of application and therefore in violation of the Eighth Amendment to the Constitution. Currently there are bills in the Massachusetts legislature attempting to reinstate capital punishment.\*

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\* Just prior to publication of this report there was legislative action on this issue. Governor Sargent vetoed a major piece of legislation attempting to reinstate the death penalty. Similar legislation can safely be anticipated from the next legislative session.

Secondly, and more parochial to Massachusetts, is the issue of furloughs for first degree lifers. In line with a national trend Massachusetts authorized and initiated a furlough program in 1972. Furloughs are temporary releases into the community in an attempt to help an inmate maintain solid ties with his family and community, and to help minimize the isolation of prison life.<sup>1</sup> A recent ruling by the state's Attorney General has suspended furloughs for first degree lifers. Prior to this ruling there had been 156 first degree lifer furloughs with only 1 violation yielding a success rate of 99.4%. The Attorney General's ruling is currently being challenged in court.\*\*

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\*\* Just prior to publication of this report there was a judicial decision reinstating furloughs for first degree lifers. Legislation attempting to deny furloughs for first degree lifers can be expected in future legislative sessions.

## BACKGROUND

### What is First Degree Murder?

Massachusetts defines first degree murder as "Murder committed with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a crime punishable with death or imprisonment for life, is murder in the first degree. Murder which does not appear to be in the first degree is murder in the second degree. The degree of murder shall be found by the jury." (G.L., c. 265, s.1) A person convicted of first degree murder receives the death penalty unless the jury recommends mercy in which case the sentence becomes life imprisonment. The statutory authorization permitting a jury to recommend that the death penalty not be imposed became effective in 1951. (G.L., c. 256, s.2, as amended by c. 203 Acts of 1951). The jury cannot recommend mercy if the murder was committed in connection with the commission of rape or an attempt to commit rape.

### Plea Bargaining

Plea bargaining is described by Arnold Enker as "an arrangement between the prosecutor and the defendant or his lawyer, whereby in return for a plea of guilty by the defendant, the prosecutor agrees to press a charge less serious than that warranted by the facts which he could prove at trial."<sup>2</sup> In Massachusetts, as in the rest of the country, plea bargaining plays a large part in determining who will eventually come to trial for first degree murder. During the years 1956-1965 Massachusetts indicted 154 people for first degree murder. Of those 154 people 97 or 63% pleaded guilty either at the indictment stage or as a final plea before trial.<sup>3</sup> The remaining 57 or 37% entered pleas of not guilty and went to trial. Of these 57 defendants 34 or 59.6% were eventually convicted of first degree murder. A complete breakdown on the final disposition of these 57 defendants is given in Table A.

TABLE A

DISPOSITION OF 154 FIRST DEGREE MURDER INDICTMENTS 1956-1965

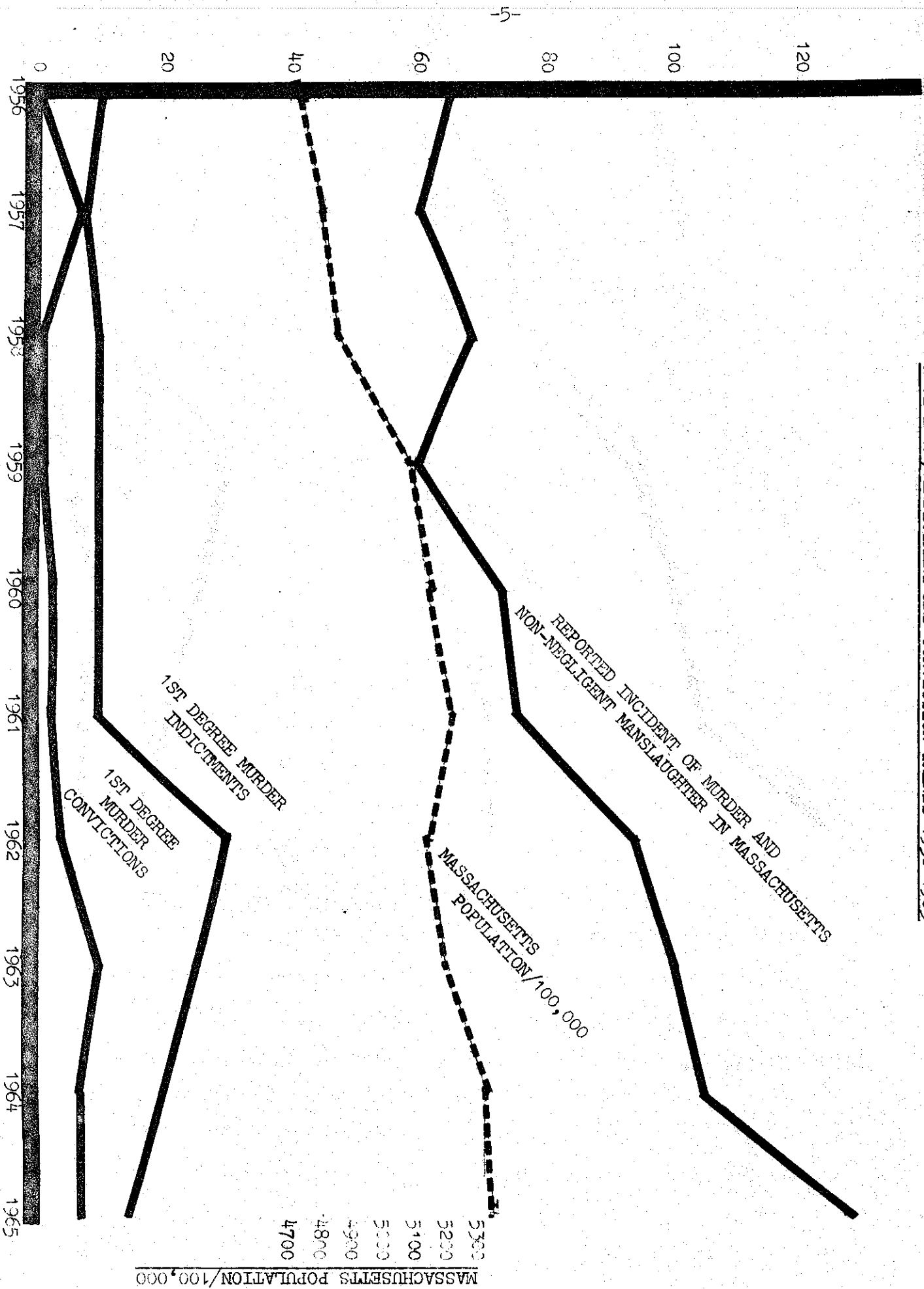
<u>PLEA/TRIAL OUTCOME</u>	<u>AT INITIAL INDICTMENT</u>	<u>FINAL PLEA</u>	<u>TRIAL OUTCOME OF</u> <span style="border: 1px solid black; border-radius: 50%; padding: 2px;">57</span>	
			<u>"NOT GUILTY" FINAL PLEAS</u>	
Not Guilty	142 (92%)	<span style="border: 1px solid black; border-radius: 50%; padding: 2px;">57</span> (37%)	9	(16%)
Guilty to Lesser Charge	12 ( 8%)	97 (63%)	6	(11%)
TOTAL	154 (100%)	154 (100%)		
Not Guilty by Reason of Insanity			8	(14%)
Guilty: Clemency <u>Not</u> Recommended			8	(14%)
Guilty: Clemency Recommended			26	(45%)
TOTAL			<span style="border: 1px solid black; border-radius: 50%; padding: 2px;">57</span>	(100%)

Tangentially it should be mentioned that during the same time period, 1956-1965, the total number of reported murders and non-negligent manslaughters in Massachusetts was 837. The source of this figure is the Federal Bureau of Investigation Uniform Crime Reports. It includes all reported incidents of "the willful killing of another" and is based "solely on police investigations."<sup>4</sup> Pulling these figures together we see that 837 reported incidents of murder and nonnegligent manslaughter produced 154 first degree murder indictments. These 154 first degree murder indictments produced 34 convictions for first degree murder. Graph A presents these figures over time.

A note of caution should be added. These figures are given solely to provide a rough measure of comparison and should not be used to impute causation due to their nature; the indictment and conviction figures are reported by the courts using legal definitions. The incident rate of murder and nonnegligent manslaughter is reported by the police using uniform crime reporting definitions.

GRAPH A

INCIDENCE, INDICTMENT AND CONVICTION TRENDS 1956-1965





It is hoped that the afore going discussion will help put all the following "facts" regarding "first degree murderers" in a proper perspective.

#### THE SENTENCES

##### The Death Penalty: Past, Present, Pending.

Using the Bible as his source Reverend Nathaniel Ward first introduced the death penalty for the crime of murder, and 9 other offenses, into the Bay Colony Laws in 1641. These laws remained basically unchanged and became part of the Constitution of the Commonwealth of Massachusetts as adopted by the people in 1780. In the 1850's opposition to capital punishment became strong and in 1852, in an effort to "keep pace with her sister states"<sup>5</sup> Massachusetts eliminated the death penalty for all offenses except murder. In 1858 again following the example of other states the legislature modified the murder law by dividing the crime of murder into two degrees. First degree murder was punishable by death, second degree murder by life imprisonment.

In 1898 the legislature (Commonwealth Laws c. 326 of the Acts of 1898) replaced hanging with electrocution as the method of execution.<sup>6</sup> Since that time 233 persons have been convicted of first degree murder. Of these 233 people 133<sup>7</sup> or 57% received death penalty sentences while the other 100 people or 43% received life imprisonment. Twenty one of the 133 death penalty sentences were invalidated by the Furman decision.

TABLE B

THE DEATH SENTENCE

January 1, 1898 to January 1, 1973

Sentenced to Death	112*	
Executed	65	(58%)
Died Awaiting Execution	1	( 1%)
Committed Suicide Awaiting Execution	1	( 1%)
Not Executed	45	(40%)
New Trial, Sentence Vacated	4	
Sentence Commuted or Reduced and:		
Released on Parole	22	
Died in Prison	5	
Still Serving	14	
	45	
TOTAL	112	(100%)

\* Minus 21 cases due to Furman decision adjustment.

On June 29, 1972 the Supreme Court ruled that the death penalty was "cruel and unusual punishment" and therefore in violation of the Eighth Amendment to the Constitution. The factor which makes the death penalty most cruel is the inequality with which it is applied to the poor and nonwhite segments of the population. In Massachusetts there is currently legislation\* aimed at reinstating the death penalty under different sets of conditions than those which the Court has declared unconstitutional. The arguments pro and con capital punishment annually fill volumes and it is not the purpose of this report to try and enumerate them. However, it should be noted in passing that the majority of arguments center around the death penalty's use as a deterrent. Abolitionists have over the years produced many systematic studies attempting to document the ineffectiveness of the death penalty as a deterrent, <sup>8,9,10,11,12,13</sup> retentionists have not produced any such attempts. As Bedau has stated, "History has yet to record a single empirical study undertaken by those who defend the death penalty on deterrent grounds."<sup>14</sup>

Life Imprisonment: Past, Present, Pending.

In 1907 a bill allowing the jury to recommend mercy when finding a person guilty of first degree murder passed in the Massachusetts Senate but was defeated by one vote in the House. Once again, forty-three years later when only three states still had the mandatory death sentence for murder such a bill failed again. Finally, in 1951 a bill was enacted which authorized the jury to recommend that the death penalty not be imposed if the murder was not committed during a rape or in an attempt to commit rape. In such cases the mandatory sentence would be life imprisonment. The difference between a sentence of life imprisonment for first degree murder and second degree murder is that with a life

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\* See footnote on page 1.



In retrospect it is interesting to examine what effect giving the jury discretion in capital cases had upon conviction trends in Massachusetts. In 1919 R.T. Bye found that a slightly larger portion of convictions was secured in murder cases in states which had abolished the death penalty than in states which had retained it.<sup>15</sup> One could infer from Bye's findings that giving the jury a non-death penalty option would result in a proportionate redistribution of types of convictions in murder and non-negligent manslaughter cases. To test this hypothesis the proportionate distribution of first degree murder, second degree murder and manslaughter convictions was examined for eight years prior and eight years post the 1951 change in Massachusetts law. No significant differences were found. A more detailed analysis of this point is contained in Appendix A.

#### Furloughs for Lifers

Currently an important piece of legislation affecting first degree lifers concerns the furlough program. A furlough is a temporary release into the community in an attempt to help an inmate maintain solid ties with his family and community, and to help minimize the isolation of prison life. When the furlough program first began in 1972 first degree lifers who were eligible were given furloughs along with the rest of the inmate population. In March of 1973 a first degree lifer failed to return from furlough thereby becoming the first such lifer to escape while on furlough. This escape began a series of events which culminated in a ruling by the State's Attorney General that the granting of furloughs to first degree lifers was not authorized by law. This ruling by the Attorney General was contrary to the practice and goals of the Department of Correction. The philosophy of the Department of Correction<sup>16</sup>

is that if the incarcerated offender is helped to maintain solid ties with both his family and community it will make his reintegration into the community easier and hopefully more permanent. Consistent with that philosophy the law governing furloughs (G.L., c. 127, s.90A as amended by c. 777, s. 18 of the Acts of 1972) has provisions for the granting of furloughs to "violent offenders" including first degree murderers. Specifically the dispute between the Attorney General and the Department of Correction centered upon clause (f) which states that furloughs may be granted "for any other reason consistent with the reintegration of a committed offender into the community." The Attorney General ruled that as long as first degree murderers are not eligible for parole they cannot be reintegrated into the community and therefore are not entitled to furloughs. The Department of Correction questions the Attorney General's conclusion on two points (1) it seems to slight the fact that even though first degree murderers are sentenced to life imprisonment with no provisions for parole, quite often they have their sentences commuted or adjusted and end up on parole and back in the community and, (2) it seems to imply that the rehabilitation process should simply be suspended while an offender is not eligible for parole. Also the Department of Correction feels that a furlough record would be the only indication available of an offender's trustworthiness in the community and therefore of great value to the Governor and his council when they consider commuting a man's sentence.

The Attorney General's ruling resulted in the cancellation of furloughs for first degree lifers. Prior to this cancellation there had been 184 first degree lifer furloughs in the 9 months since the beginning of the program with only one escape yeilding a success rate of 99.5%. It is ironic that while murderers as an offense group have had the best success rate in the furlough program, first degree murderers are no longer considered eligible for furloughs,

while just the inverse is true of other offense groups. The Attorney General's ruling is currently being challenged in court.\*\*

### Appeals

An individual convicted of first degree murder has two avenues of appeal open to him. Appeals can be made on constitutional grounds to either the State Superior Court or the U.S. Supreme Court. Also on the state level all first degree murder cases and evidence are automatically subject to review by the Supreme Judicial Court of the county in which the case was tried. (G.L. c. 278, s. 33E as amended by C. 453 Acts of 1962). If the court is not satisfied that justice was served it may (1) order a new trial or (2) direct the entry of a verdict of a lesser degree of guilt, and remand the case to the superior court for the imposition of sentence. Of the 117 first degree murder convictions from 1963-1972, 22 of them or 19% were affected by these procedures. Of these 22 people, 5 received new trials while the other 17 received reduced sentences or reduced charges and therefore reduced sentences.

### Respites

A respite is a temporary stay of execution. In Massachusetts a person awaiting execution may receive a respite in one of two ways. The Supreme Judicial Court may grant a "stay of execution" if it needs more time to complete its review of the case. (G.L., c. 279, s. 49A) Additionally the Governor with the consent of the Governor's Council may grant a respite. (G.L. c. 279, s. 49)

At present there is no need for respites in Massachusetts due to the Furman v Georgia Supreme Court ruling.

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\*\* See footnote on page 2.

### Commutations and Parole

The Governor may with the advice and consent of his Council, and upon written petition of an offender commute the sentence of a first degree murderer. (G.L., c. 127, s. 152) If the sentence being commuted is death it is normally commuted to life imprisonment without possibility of parole. If the sentence being commuted is life it is normally commuted to a term of years to life. (e.g., 27 years to life) Usually the term of years is of such a length that the offender becomes eligible for parole. Originally the law governing parole (G.L., c 127, s. 133A) made no provision for the granting of parole to first degree lifers. Then in 1956 an act was approved which stated that a first degree murderer who has his sentence commuted as provided in (G.L., c. 127, s. 54) shall thereafter be subject to the provisions of law governing parole for persons sentenced to lesser offenses. The procedure leading from commutation of a first degree sentence to parole is not a common one. In the past ten years there have been only 10 such cases.



FIRST DEGREE MURDER, A STATISTICAL SUMMARY 1900-1973

Current or Final Disposition

This data represents a statistical summary of the disposition of those persons convicted of first degree murder in Massachusetts from January 1, 1900 to January 1, 1973. The disposition can be either final or current. Final dispositions include electrocution, died, suicide or release. Current dispositions include serving life or serving altered sentence. The data presented is a composite of two part studies plus a ten year update. Table E is frequency counts. Table F is the same data converted to percentage by time frame for purposes of comparison.

Trends: National and State

It is an unfortunate fact that crime rates have steadily risen over the past decade. Specifically the national rate of murder and nonnegligent manslaughter (M & NNM) rose from 5.0 in 1960 to 7.8/100,000 (incident/population) in 1970, an increase of 56%. At the same time the Massachusetts M & NNM rate rose from 1.5 in 1960 to 3.5 in 1970, an increase of 133%. While the percentage increase in the past decade is much greater in Massachusetts than in the U.S., 133% vs 56%, the incident per 100,000 population remains lower in Massachusetts than in the U.S., 3.5 vs. 7.8. If one examines the commitment figures of the Massachusetts Correctional Institutions (MCI's) for the same time period a very interesting fact emerges. The commitment rate for murder and manslaughter rose from .6 in 1960 to 1.4/100,000 (commitments/population) in 1970, an increase of 133% exactly reflecting the states M & NNM increase for the same time period. See Table G.

TABLE D

FREQUENCY COUNTS  
CURRENT OR FINAL DISPOSITIONS

	TIME FRAME			
	1-1-1900 to 5-10-1947	5-19-1947 to 12-31-1962	1-1-1963 to 1-1-1973	TOTAL
<u>DEATH PENALTY SENTENCES</u>				
Electrocution	65	0 <sup>A</sup>	0	65
Died Awaiting Execution	1	0	0	1
Suicide Awaiting Execution	0	1	0	1
New Trial, Found Not Guilty	2	1	1	4
Sentence Commuted or Reduced	19	17	26	62
and Released on Parole	15	7	0	22
and Died in Prison	4	1	0	5
and Still Incarcerated	0	9	26 <sup>C</sup>	35
Death Sentence <u>Sub-Total</u> .....	87	19	27	133
<u>LIFE IMPRISONMENT SENTENCES</u>				
Currently Serving Life	0	5 <sup>B</sup>	70	75
Died While Serving Life	0	0	1	1
New Trial, Found Not Guilty	0	0	1	1
Sentence Commuted or Reduced	0	5	18	23
and Released on Parole	0	5	9	14
and Still Incarcerated	0	0	9	9
Life Sentence <u>Sub-Total</u> .....	0	10	90	100
TOTAL	87	29	117	233
CUMULATIVE TOTAL	87	116	223	

A Last execution in Massachusetts 5-9-1947.

B Jury first authorized to recommend life in 1951.

C 18 of these cases are a result of the Furman decision.

**TABLE E**  
**PERCENTAGES**  
**CURRENT OR FINAL DISPOSITIONS**

**TIME FRAME**

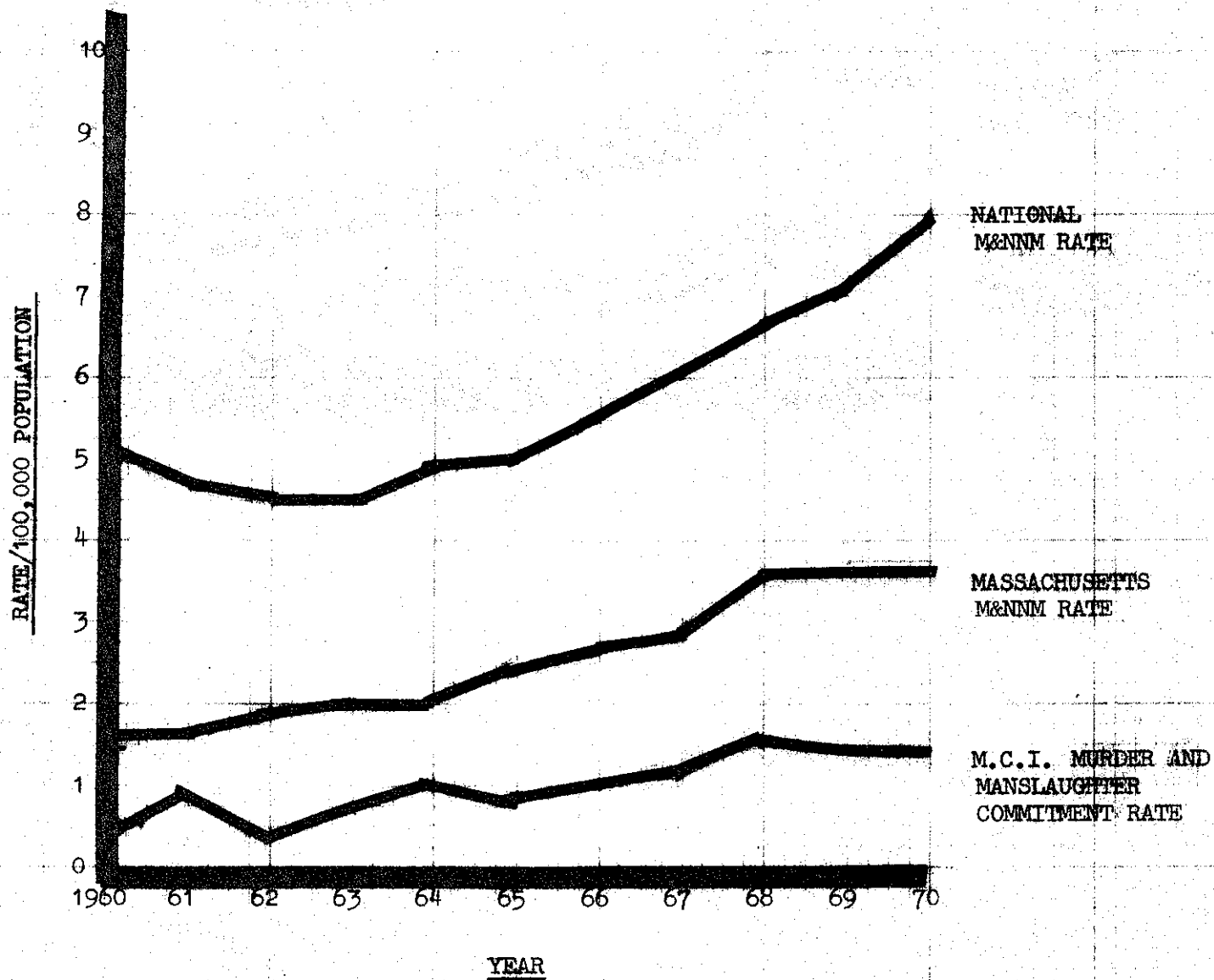
	1-1-1900 to 5-10-1947	5-19-1947 to 12-31-1962	1-1-1963 to 1-1-1973	TOTAL
<b>DEATH PENALTY SENTENCES</b>				
Electrocution	75	0 <sup>A</sup>	0	28
Died Awaiting Execution	1	0	0	0.4
Suicide Awaiting Execution	0	3	0	0.4
New Trial, Found Not Guilty	2	3	1	1.7
Sentence Commuted or Reduced and Released on Parole	22 ← 17	59 ← 24	22 ← 0	27
and Died in Prison	5	3	0	10
and Still Incarcerated	0	32	0	2
Death Sentence <u>Sub-Total</u> .....	100	65	23	15
				57
<b>LIFE IMPRISONMENT SENTENCES</b>				
Currently Serving Life	0	17 <sup>B</sup>	60	32
Died While Serving Life	0	0	1	1.7
New Trial, Found Not Guilty	0	0	1	1.7
Sentence Commuted or Reduced and Released on Parole	0	17 ← 17	15 ← 7.5	10 ← 6
and Still Incarcerated	0	0	7.5	4
Life Sentence <u>Sub-Total</u> .....	0	35	77	43
<b>TOTAL</b>	100%	100%	100%	100%

A Last execution in Massachusetts 5-9-1947.

B Jury first authorized to recommend life in 1951.

GRAPH B

COMPARISON OF NATIONAL M&NNM RATE WITH MASSACHUSETTS' M&NNM RATE  
AND MCI MURDER AND MANSLAUGHTER COMMITMENT RATE



Once again a note of caution should be added. The national and state M & NNM data is collected by the police using uniform crime reporting definitions while the MCI commitments data is reported by the Department of Correction using judicial definitions.

Movement of First Degree Lifers Within the Massachusetts Correction Institutions.

It is a common misconception that once a person is convicted of first degree murder he is sentenced to a maximum security institution due to his violent nature and remains there for the duration of his sentence. This view is not entirely accurate. Of the 117 people sentenced for first degree murder between 1-1-63 and 1-1-73 only 58 or 49% remain in MCI, Walpole the state's adult maximum security correctional institution. The other 59 offenders or 51% are either in other state correctional institutions where there is less emphasis on security, or out of the state system entirely. See Table H.

It should also be noted that the year prior to the Furman decision the Massachusetts Legislature passed a law that in effect did away with "Death Row". (G.L. c. 279, s. 44 as amended by c. 1055, Acts of 1971.) The effect of this law was such that all inmates confined to "Death Row" were transferred to the general prison population and afforded the same rights and privileges as other inmates to include "full participation in the educational and work programs, within the prison." Additionally it has long been recognized that murderers are among the most well behaved of prisoners and once released have a recidivism rate only 1/6 that of all other offenders combined.<sup>17</sup>

TABLE F

Current Security Level of Persons Committed for  
1st Degree Murder Between January 1, 1963 and January 1, 1973

COMMITMENTS		MCI LOCATION AS OF JANUARY 1, 1973					
YEAR	TOTAL	WALPOLE	NORFOLK	CONCORD	BRIDGEWATER	FRAMINGHAM	OTHER*
1963	10	2	5	0	1	0	2
1964	8	5	2	0	1	0	0
1965	9	3	5	0	0	0	1
1966	12	5	1	1	0	0	5
1967	7	4	1	0	1	0	1
1968	16	9	2	0	1	0	4
1969	9	4	3	1	0	0	1
1970	15	7	5	2	1	0	1
1971	14	5	6	0	2	1	0
1972	17	14	1	1	1	0	0
TOTAL	117 (100%)	58 (49%)	30 (26%)	5 (4%)	8 (7%)	1 (1%)	15 (13%)
MAXIMUM SECURITY ADULT MALE		↑	↑	↑	↑	↑	
MEDIUM SECURITY MALE			↑	↑	↑	↑	
MAXIMUM SECURITY MALE				↑	↑	↑	
MEDIUM SECURITY MALE					↑	↑	
MINIMUM SECURITY MALE AND FEMALE						↑	

\* Other Includes: Transferred to House of Correction or Out of State  
New Trial Sentenced Reversed or Reduced  
Commuted and Paroled  
Died While Incarcerated

Summary

The purpose of this report was to provide information about first degree murderers in a correctional system. The historical development of the definition of, and the sentence for, first degree murder has been reviewed as have the legal procedures governing post conviction decisions regarding first degree murderers. Additionally an analysis of state and national trends was done to provide a measure of comparison. Finally, the inter-institutional movement of first degree murderers was charted to illustrate the variety of security settings Massachusetts employes with first degree murderers.

F O O T N O T E S

1. For further discussion of the Massachusetts furlough program see Massachusetts Department of Correction Report #65 by the Research and Planning Unit.
2. Enker, Arnold, Perspectives on Plea Bargaining, in Task Force Report: The Courts.
3. Carney, Frank "A Study of Plea Bargaining in Murder Cases in Massachusetts," Suffolk University Law Review Vol. 3, No. 2, 1969.
4. Uniform Crime Reports, 1970.
5. Powers, Edwin, Crime and Punishment in Early Massachusetts 1620-1692 A Documentary History Beacon Press, Boston, Mass. 1966 pp. 311.
6. For more details on executions see Massachusetts Department of Correction memo #173 by J. Landolfi.
7. For further discussion of the death penalty in Massachusetts see Massachusetts Department of Correction Report #46 by E. Callahan, 1971.
8. Sellin, Thorsten ed. Capital Punishment, Harper and Row, New York, 1967.
9. United Nations, Department of Economic and Social Affairs, Capital Punishment, 1962.
10. Wolfgang, Marvin E., Patterns in Criminal Homicide, University of Pennsylvania, Press, Philadelphia, 1958.
11. McCafferty, James, "Major Trends in the Use of Capital Punishment," Federal Probation, September, 1961.
12. Ohio Legislative Service Commission, Capital Punishment, 1961.
13. Legislative Council of Maryland, Report of the Committee on Capital Punishment, 1962.
14. Bedau, Hugo A., The Death Penalty in America, Federal Probation, June 1971.
15. Bye, R.T. in Criminology by Sutherland and Cressey, J.P. Lippincott Company
16. Massachusetts Department of Correction, Memo #125 by F. Carney.
17. Carney, Tosti, and Turchetti, "An Analysis of Convicted Murderers in Massachusetts", Massachusetts Department of Correction Report #19, 1968.



## A P P E N D I X A

### AN ANALYSIS OF THE EFFECTS OF 1951 LAW ON JURIES SENTENCING BEHAVIOR

Problem Statement: In 1951 the Massachusetts Legislature enacted a law giving the jury discretion in first degree murder cases. No longer would the death penalty be mandatory for first degree murder, rather at the discretion of the jury the penalty could be life imprisonment. In 1919 R.T. Bye found that a slightly larger portion of convictions was secured in murder cases in states which had retained it. This raises the question of how the 1951 ruling effected convictions in Massachusetts

Hypothesis: The 1951 ruling giving the jury discretion in first degree murder cases resulted in a greater percentage of homicide cases producing first degree murder convictions.

Definition: Homicide cases are all cases resulting in first degree murder, second degree murder and manslaughter convictions.

Method: To examine the effects of the law data was collected on all commitments to the Massachusetts Correctional Institutions for first degree murder, second degree murder and manslaughter for the years 1943 to 1959. The data was then split into two groups, the eight years prior to 1951 and the eight years post 1951. Data from 1951 was eliminated because of the transitional state of the laws that year.

To adjust for annual fluctuations in the total number of commitments the data was transformed from frequencies to percentages. (Table I) the data was then submitted to analysis of variance.

# DISTRIBUTION OF VERDICTS PRODUCED BY HOMICIDE CASES

7.8

Results: The analysis of variance on pre and post 1951 convictions produced no significant differences in any of the offense categories. These results do not support the hypothesis that giving the jury discretion in 1951 would produce an increase in first degree murder convictions.

While the distribution of verdicts (i.e., first degree, second degree, manslaughter) remained unaffected by the 1951 law, the frequency with which death was given as a sentence decreased significantly. Comparing the frequency with which homicide cases resulted in death sentences as opposed to other sentences (life or a term of years) one sees that in the 8 years prior to 1951 the death sentences were given 15% of the time as opposed to 3% of the time in the 8 years post 1951. This analysis produced a  $\chi^2 = 15.87$  which is significant at p .001.

	<u>1943-1950</u>	<u>1952-1959</u>	<u>TOTAL</u>
Death Sentence	17 (15)	6 (3)	23 (7)
Other Sentences For Homicides	100 (85)	206 (97)	306 (93)
TOTAL	117 (100)	212 (100)	329 (100)

$$\chi^2 = 15.8$$